

LEGISLATIVE BILL 734

Approved by the Governor April 2, 1997

Introduced by Robinson, 16

AN ACT relating to cities and villages; to amend section 16-309, Reissue Revised Statutes of Nebraska, and sections 32-568 and 32-569, Revised Statutes Supplement, 1996; to change provisions relating to terms of office and filling of vacancies; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 16-309, Reissue Revised Statutes of Nebraska, is amended to read:

16-309. All officers appointed by the mayor and confirmed by the council shall hold the office to which they may be appointed until the end of the mayor's term of office, ~~except the chief of the fire department whose term of office shall be for one year only,~~ and until their successors are appointed and qualified, unless sooner removed, or the ordinance creating the office ~~shall be is repealed,~~ except as otherwise specifically herein provided.

Sec. 2. Section 32-568, Revised Statutes Supplement, 1996, is amended to read:

32-568. (1) If any vacancy occurs in the office of city council member of a city of the metropolitan class, the remaining members of the council shall appoint a person to fill such vacancy from the district in which the vacancy occurred for the remainder of the term. The person thus appointed shall qualify and give bond as by law provided for council members elected to such office. A vacancy in the office of mayor of a city of the metropolitan class shall be filled as provided by local law.

(2) The city council of a city of the primary class may provide for filling any vacancies that occur in any elective office by appointment by the mayor, with the advice and consent of the council, to hold office until the next general city election. In case of vacancy in the office of mayor of a city of the primary class or his or her absence or disability, the president of the council shall exercise the powers and duties of the office until such vacancy is filled or disability removed or, in case of temporary absence, until the mayor returns, and such acting mayor shall perform such other duties as may be required by law.

(3) In a city of the first class except a city which has adopted the commissioner or city manager plan of government, any vacancy on the council resulting from causes other than expiration of the term shall be filled by appointment by the mayor with the consent of the city council to hold office until a successor is elected at the next regular election held more than sixty days from the date of vacancy. At such election a successor shall be elected to hold office for the remainder of the term. When there is a vacancy in the office of the mayor in a city of the first class, the president of the city council shall serve as mayor for the unexpired term, ~~except that if at least one-half of the previous mayor's term remains and a general election is to be held more than sixty days from the date of vacancy, a successor shall be elected at the next general election for the balance of the previous mayor's unexpired term.~~ In case of any vacancy in the office of mayor, or in case of his or her absence or disability, the president of the council shall exercise the powers and duties of the office of mayor until such vacancy shall be filled or such disability removed, or in case of temporary absence until the mayor returns, and shall perform such other duties as may be required by law.

(4) Any vacancy on the city council of a city of the second class shall be filled as provided in section 32-569. In the case of any vacancy in the office of mayor, or in case of his or her disability or absence, the president of the council shall exercise the office of mayor for the unexpired term until such vacancy is filled or such disability is removed, or in case of temporary absence, until the mayor returns. If the president of the council assumes the office of mayor for the unexpired term, there shall be a vacancy on the council.

(5) A vacancy on the board of trustees of a village shall be filled as provided in section 32-569, except that the board of trustees of a village situated in more than one county shall have power to fill by appointment any vacancy that may occur in their number.

(6) If any vacancy occurs in the office of council member in a city under the commission plan of government, the vacancy shall be filled as provided in section 32-569. If an incumbent in a city under the commission

plan of government files for a city office other than the office he or she holds, the office he or she holds shall become vacant as of the date of the commencement of the term of the office for which he or she has filed. If such vacancy results in an unexpired term, such vacancy shall be filled by election for the remainder of the unexpired term. In a city under the commission plan of government, the vice president of the city council shall perform the duties of the mayor of the city in the absence or inability of the mayor to serve. If a vacancy occurs in the office of mayor by death or otherwise, the vice president shall perform the duties of mayor of the city until such time as the council shall fill such vacancy, which shall be done at the first council meeting after such vacancy occurs or as soon thereafter as may be practicable.

(7) If a vacancy occurs in the office of ward council member in a city under a city manager plan, a successor council member shall be elected in the ward at the next regular city election to serve for the remainder of the term, except that a majority of the remaining members of the council shall appoint a registered voter of the ward to serve as council member until the successor is so elected and has qualified. If for any reason the seats of a majority of the council become vacant, the city clerk shall call a special election to fill the vacancies for the unexpired portion of each term, which election shall be conducted as provided for the regular city election. A vacancy in any office to which the council elects shall be filled by the council for the unexpired term.

(8) Vacancies in city offices in any city under home rule charter shall be filled as provided in the home rule charter.

Sec. 3. Section 32-569, Revised Statutes Supplement, 1996, is amended to read:

32-569. (1)(a) Except as otherwise provided in subsection (2) or (3) of this section or section 32-568, vacancies in city and village elected offices shall be filled by the mayor and council or board of trustees for the balance of the unexpired term. Notice of a vacancy, except a vacancy resulting from the death of the incumbent, shall be in writing and presented to the council or board of trustees at a regular or special meeting and shall appear as a part of the minutes of such meeting. The council or board of trustees shall at once give public notice of the vacancy by causing to be published in a newspaper of general circulation within the city or village or by posting in three public places in the city or village the office vacated and the length of the unexpired term.

(b) The mayor or chairperson of the board shall, within four weeks after the meeting at which such notice of vacancy has been presented or upon the death of the incumbent, call a special meeting of the council or board of trustees or place the issue of filling such vacancy on the agenda at the next regular meeting at which time the mayor or chairperson shall submit the name of a qualified registered voter to fill the vacancy for the balance of the unexpired term. The council or board of trustees shall vote upon such nominee, and if a majority votes in favor of such nominee, the vacancy shall be declared filled. If the nominee fails to receive a majority of the votes, the nomination shall be rejected and the mayor or chairperson shall at the next regular or special meeting submit the name of another qualified registered voter to fill the vacancy. If the subsequent nominee fails to receive a majority of the votes, the mayor or chairperson shall continue at such meeting to submit the names of qualified registered voters in nomination and the council or board of trustees shall continue to vote upon such nominations until the vacancy is filled. The mayor or chairperson shall cast his or her vote for or against the nominee in the case of a tie vote of the council or board of trustees. All council members and trustees present shall cast a ballot for or against the nominee. Any member of the city council or board of trustees who has been appointed to fill a vacancy on the council or board shall have the same rights, including voting, as if such person were elected.

(2) The mayor and council or chairperson and board of trustees may, in lieu of filling a vacancy in a city or village elected office as provided in subsection (1) of this section or subsection (3) of section 32-568, call a special city election to fill such vacancy.

(3) If vacancies exist in the offices of a majority of the members of a city council or village board, the Secretary of State shall conduct a special city election to fill such vacancies.

Sec. 4. Original section 16-309, Reissue Revised Statutes of Nebraska, and sections 32-568 and 32-569, Revised Statutes Supplement, 1996, are repealed.